

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
KELLI J. EVANS-BOO,) CASE NO. 08-20159 JPK
) Chapter 7
Debtor.)

ORDER DENYING MOTION TO SHORTEN THE TIME FRAME TO ANSWER
DISCOVERY("MOTION")

This Chapter 7 case originated as a Chapter 13 case, and was converted to Chapter 7 on June 30, 2008. The Chapter 7 Trustee has conducted the Section 341 meeting, and a No-Asset Report was filed on August 14, 2008. On September 27, 2008, Scott Allan Boo, through attorney Andrew Kraemer, initiated Adversary Proceeding No. 08-2106 to determine dischargeability of debts arising under a Settlement Agreement entered in a dissolution of marriage proceeding. Scott Allan Boo, through attorney Kraemer, also filed an Objection to the debtor's Motion to Dismiss filed on November 4, 2008. The Motion itself requests a shortening of the time allowed to the debtor to answer certain discovery requests apparently submitted to the debtor by Mr. Boo's attorney, so that the responses to the discovery requests arrive prior to the hearing on the Motion to Dismiss set for December 12, 2008.

The motion appears to relate to discovery requests which request information as to the debtor's reasons for seeking dismissal of the case.

This is a very convoluted record at present. First, by report filed on August 14, 2008, the Chapter 7 Trustee has determined that there are no assets to administer for the benefit of creditors. Pursuant to the notice issued as record entry No. 48 on July 3, 2008, the deadline for complaints objecting to discharge under 11 U.S.C. § 727(a) was September 29, 2008, and no such complaint has been filed. Under Fed.R.Bankr.P. 4004(c), the debtor was entitled to the entry of an order of discharge— but for the agreed order entered on July 31, 2008 which extended the deadline for the Trustee to object to discharge until November 11, 2008, which

tolled the entry of discharge pursuant to Rule 4004(c)(1). Prior to the expiration of the extended deadline, the debtor filed a motion to dismiss on November 4, 2008, which precludes the entry of discharge pursuant to Rule 4004(c)(1)(D), and which can only be granted “for cause” under 11 U.S.C. § 707(a). The result: if the debtor’s case is dismissed, the debtor will not receive a discharge. This result may not be apparent, but that will be the result . . . probably.

If the debtor’s motion is granted and the debtor does not receive a discharge, the debts which are now subject to the adversary proceeding are ipso facto not subject to a discharge. The purported focus of the discovery– to determine the reasons for the debtor’s Motion to Dismiss– would be irrelevant. If the debtor were to receive a discharge prior to dismissal, any debt subject to 11 U.S.C. § 523(a)(15) would be excepted from discharge, as would any debt subject to 11 U.S.C. § 523(a)(8) [subject to an undue hardship defense]– matters not within the exclusive jurisdiction of this court; 11 U.S.C. § 523(c)(1). Boo’s adversary proceeding assertions under 11 U.S.C. § 523(a)(6) are within the exclusive jurisdiction of this court, and under applicable law the court would have jurisdiction of this claim despite dismissal of the case. In any context, the focus of Boo’s discovery appears to the court to be irrelevant.

IT IS ORDERED that a Final Hearing will be held on the Objection to dismissal filed by Scott Allan Boo, concurrently with the hearing on the debtor’s Motion to Dismiss set for **9:00 A.M. on December 12, 2008.**

IT IS FURTHER ORDERED, that the foregoing Motion is DENIED.

Dated at Hammond, Indiana on December 11, 2008.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee
Andrew Kraemer